IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4141 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE Sd/-
HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BANK OF INDIA - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SANDEEP N BHATT for Petitioner(s) : 1,
MS NANDINI JOSHI, Learned AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 05/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. The petitioner is a nationalized bank, which has been aggrieved by the order dated 7.1.2004

passed by respondent No.2, whereby the petitioner bank has been called upon to pay lumpsum vehicle tax of Rs. 42,000/- and penalty on the said amount at the rate of 25% and interest till the said amount of tax and penalty is paid in respect of a tractor, bearing No. GJ-4T-2471. The circumstances, in which the impugned order has been issued to the petitioner, are as under:-

2. The petitioner bank had financed Shri Kalabhai Jadavbhai for the purpose of purchase of a tractor and out of the amount lent to said Shri Kalabhai Jadavbhai, the aforesaid tractor had been purchased. The tractor had been hypothecated in favour of the petitioner bank by borrower Shri Kalabhai Jadavbhai. As the borrower could not repay the amount to the petitioner bank, the petitioner bank had taken possession of the tractor on 16th July, 2002 in pursuance of the agreement of hypothecation. Thereafter, the said tractor had been sold on 1.2.2003 to Shri Mayabhai Nonghabhai.

3. The petitioner bank wanted the tractor to be transferred in the name of buyer Shri Mayabhai Nonghabhai. Borrower Shri Kalabhai Jadavbhai did not extend his co-operation to the petitioner bank by submitting R.C. book and, therefore, respondent No.2 was requested by the petitioner bank to furnish a duplicate R.C. book and to transfer the

tractor in favour of Shri Mayabhai Nonghabhai.

4. In pursuance of the said request made by the petitioner bank, respondent No.2 refused to effect the transfer of the tractor in the name of Shri Mayabhai Nonghabhai, because the vehicle tax in respect of the tractor in pursuance of the provisions of the Bombay Motor Vehicles Tax Act, 1958 (Hereinafter referred to as the "Act") had not been paid. In the circumstances, the impugned order dated 7.1.2004 had been issued by respondent No.2 to the petitioner bank.

5. After filing the petition, some development had taken place in pursuance of the interim order passed by this Court on 24th August, 2004. By virtue of the said order, as submitted by learned advocate Shri Sandeep Bhatt, appearing for the petitioner, a duplicate R.C. book had been furnished to the respondent bank and the tractor was also permitted to be transferred in the name of Shri Mayabhai Nonghabhai. Thus, the grievance with regard to not permitting the bank to transfer the tractor in favour of Shri Mayabhai Nonghabhai has already been redressed. The question which now remains is with regard to the payment of tax.

6. Learned advocate Shri Sandeep Bhatt, appearing for the petitioner, has submitted that the demand raised under the impugned notice is

misconceived in law for the reason that the tractor was being used for agricultural purpose and, therefore, as per the provisions of Section 13 of the Act, no tax was payable in respect of the said tractor. He has further submitted that the petitioner bank did not use the tractor and, therefore, there is no question of paying any tax in respect of the tractor.

7. Thereafter, he has submitted that the petitioner bank is a nationalized bank rendering services to the agriculturists in pursuance of the policy of the State. It is his case that, even by having less margin of profit or without any profit, the petitioner bank is lending money to the agriculturists and, therefore, no tax should be recovered from the petitioner bank in respect of the tractor.

8. On the other hand, learned AGP Ms. Nandini Joshi has submitted that the petitioner bank has become “owner” of the tractor in question upon getting the possession thereof from borrower Shri Kalabhai Jadavbhai. She has drawn our attention to the definition of the term 'Owner', as defined under Section 2(30) of the Motor Vehicles Act, 1988. It has been submitted by her that, in pursuance of the agreement of hypothecation, the petitioner bank had taken possession of the tractor and, therefore, the

petitioner bank has become “owner” of the tractor and, therefore, the petitioner-owner is liable to pay tax in respect of the tractor. She has submitted that the demand made is just and proper and respondent No.2 has rightly directed the petitioner bank to pay the amount of tax payable by the petitioner bank, as an “owner” of the tractor.

9. We have heard the learned advocates and have also considered the documents on record.

10. It is not in dispute that Shri Kalabhai Jadavbhai had borrowed money from the petitioner bank for the purpose of purchase of the tractor and the tractor had been hypothecated in favour of the petitioner bank and an agreement of hypothecation dated 19th October, 1995 had been executed between borrower Shri Kalabhai Jadavbhai and the petitioner bank. It is not in dispute that, in pursuance of the said agreement of hypothecation, as the borrower did not repay his dues to the petitioner bank, on 16th July, 2002, the petitioner bank had taken possession of the tractor and thereafter the tractor was sold on 1.2.2003 to Shri Mayabhai Nonghabhai. It is also not in dispute that the tractor was being used for agricultural purpose by Shri Kalabhai Jadavbhai and, therefore, according to the provisions of Section 13 of the Act, no tax in respect of the said tractor was to be paid by Shri Kalabhai Jadavbhai.

11. The question with regard to payment of tax would arise only for the period commencing from 16th July, 2002 to 1.2.2003, when the tractor was in possession of the petitioner bank and when it was not put to agricultural use. Section 13(1) of the Act, at the relevant time, read as under:-

> "13(1)- All motor vehicles designed and used solely for agricultural operations on farms or farm lands, shall be exempted from the payment of the tax."

12. It is not in dispute that, during the period when the petitioner bank was in possession of the tractor, it was not used for agricultural operations. According to the aforesaid section, exemption can be granted only if the motor vehicle is designed and used solely for agricultural operations on the farms or farm land.

13. As the tractor had not been used by the petitioner bank for the period commencing from 16th July, 2002 to 1.2.2003, in our opinion, the petitioner bank, as an "owner", might have to pay the tax in respect of the tractor. We are not concerned with the period subsequent to 1.2.2003, when the tractor had been purchased by Shri Mayabhai Nonghabhai. It is pertinent to note that the owner becomes liable to pay tax in respect of the motor

vehicle and as the petitioner bank was in possession of the tractor in question, under the agreement of hypothecation, as per the definition of term “Owner”, the petitioner bank had become “owner” of the tractor.

14. In our opinion, lumpsum tax could not have been levied on the petitioner bank as the petitioner bank was in possession of the tractor in question only for the limited period. The tractor was not subject to any tax at the time when the possession thereof had been taken by the petitioner bank.

15. In the aforesaid circumstances, we quash and set aside the demand raised by respondent No.2 in respect of the tractor in question. However, we direct that the petitioner bank shall pay tax, which might be determined by respondent No.2 in respect of the tractor for the period commencing from 16.7.2002 to 1.2.2003. Respondent No.2 shall issue a fresh notice calling upon the petitioner bank to pay the amount of tax, etc., which might be determined by him for the aforesaid period and shall recover the amount in accordance with law from the petitioner, after hearing the petitioner.

16. We are sure that respondent No.2 shall consider the submissions, which might be made on

behalf of the bank before determining the final amount, which might become payable by the petitioner bank.

17. In view of the above order, the petition stands disposed as allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/- Sd/-

(ANIL. R. DAVE, J.) (HARSHA DEVANI,J.)

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